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28 IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

22 )  
23 UNITED STATES OF AMERICA and the )  
24 STATE OF CALIFORNIA, )  
25 )  
26 Plaintiffs, )  
27 )  
28 v. )  
29 )  
30 CHEVRON USA, INC., et al., )  
31 )  
32 )  
33 Defendants. )

Civil No. F-98-5412 REC DLB

SECOND CONSENT DECREE

LODGED

JUL 27 2001

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_ DEPUTY

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), previously filed a Complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in the Complaint sought, inter alia, (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice, and (2) performance of response Work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of California (the "State") on September 11, 2000, of negotiations with Settling Work Defendant regarding the implementation of the additional remedial action(s) for the Site required by EPA's Explanation of Significant Differences ("ESD-2"), dated March 30 2001, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The Settling Work Defendant, among others, entered into a prior Consent Decree ("CD-1") resolving the claims raised in the United States' complaint. CD-1 was entered by this Court on or about December 21, 1998. Pursuant to CD-1, the Settling Work Defendant did not admit any liability to the plaintiff or any other person or entity related to the Site, nor did it acknowledge that the release or threatened release of hazardous

1 substances at or from the Site constituted an imminent or  
2 substantial endangerment to the public health or welfare or the  
3 environment. In entering into this Consent Decree, the Settling  
4 Work Defendant again does not admit any liability to the  
5 plaintiff or any other person or entity related to the Site, nor  
6 does it acknowledge that the release or threatened release of  
7 hazardous substances at or from the Site constitutes an imminent  
8 or substantial endangerment to the public health or welfare or  
9 the environment.

10 E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
11 EPA placed the Site on the National Priorities List, set forth at  
12 40 C.F.R. Part 300, Appendix B, by publication in the Federal  
13 Register on December 30, 1982, 47 Fed. Reg. 58476.

14 F. In January 1986, in response to a release or a  
15 substantial threat of a release of hazardous substance(s) at or  
16 from the Site, EPA commenced a Remedial Investigation and  
17 Feasibility Study ("RI/FS") for the Site, pursuant to 40 C.F.R.  
18 § 300.68.

19 G. EPA completed a Remedial Investigation ("RI") Report in  
20 October 1988 and a Feasibility Study ("FS") Report in April 1989.  
21 EPA selected a groundwater remedial action, which is embodied in  
22 the Record of Decision ("OU-1 ROD") for the Groundwater and Tanks  
23 Operable Unit (OU-1) signed by the EPA Regional Administrator on  
24 September 26, 1989.

25 H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,  
26 EPA published a notice of the completion of the FS and of the  
27 proposed plan for remedial action for soils on June 8, 1992, in a  
28 major local newspaper of general circulation. EPA provided an

1 opportunity for written and oral comments from the public on the  
2 proposed plan for the Soils Operable Unit ("OU-2") from June 8,  
3 1992 until August 10, 1992. A copy of the transcript of the  
4 public meeting is available to the public as part of the  
5 administrative record upon which the Regional Administrator based  
6 the selection of the response action for the Site.

7 I. The decision by EPA on the remedial action to be  
8 implemented at the Site for OU-2 is embodied in a final Record of  
9 Decision ("ROD"), executed on September 30, 1992, on which the  
10 State has given its concurrence. A copy of the OU-2 ROD is  
11 attached as Appendix A to CD-1. The ROD includes a  
12 responsiveness summary concerning the public comments. Notice of  
13 the final remedial action plan was published in accordance with  
14 Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). An Explanation of  
15 Significant Differences ("ESD-1") was signed on September 6,  
16 1996. The modifications included changes to the RCRA equivalent  
17 cap and the scaling down of the proposed soil vapor extraction  
18 system. The proposed construction of the slurry wall also was  
19 eliminated. The ESD-1 is attached as Appendix B to CD-1. Based  
20 on information developed after the issuance of the ESD as well as  
21 a reevaluation of the health risks posed by the Purity Site,  
22 particularly those risks associated with the implementation of  
23 the OU-2 remedy, EPA issued a second modification to the OU-2 ROD  
24 through an ESD-2 on March 30, 2001. The ESD-2 is attached as  
25 Appendix A. Pursuant to the ESD-2, all residents of the Tall  
26 Trees Mobile Home Park, which is located immediately adjacent to  
27 and downwind of the Purity property, are to be temporarily  
28 relocated during the performance of the soil remedy at the Site,

1 and a certain number of residents will thereafter be permanently  
2 relocated.

3 J. Based on the information presently available to EPA,  
4 EPA believes that the additional remedial actions required by  
5 ESD-2, or portions of them, in addition to the remedial actions  
6 required by CD-1, will be properly and promptly conducted by the  
7 Settling Work Defendant if conducted in accordance with the  
8 requirements of this Consent Decree and its appendices.

9 K. Solely for the purposes of Section 113(j) of CERCLA,  
10 the additional Remedial Actions selected by the ROD Amendment and  
11 the Work to be performed by the Settling Work Defendant shall  
12 constitute a response action taken or ordered by the President.

13 L. The Parties recognize, and the Court by entering this  
14 Consent Decree finds, that the Parties have negotiated and  
15 entered into this Consent Decree in good faith, that  
16 implementation of this Consent Decree will expedite the cleanup  
17 of the Site and will avoid prolonged and complicated litigation  
18 between the Parties, and that this Consent Decree is fair,  
19 reasonable, and in the public interest.

20 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED:

21 II. JURISDICTION

22 1. This Court has jurisdiction over the subject matter of  
23 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.  
24 §§ 9606, 9607, and 9613(b). This Court also has personal  
25 jurisdiction over the Parties. Solely for the purposes of this  
26 Consent Decree and the underlying Complaints, Settling Work  
27 Defendant waives all objections and defenses that they may have  
28 to the jurisdiction of the Court or to venue in this District.



1 Settling Work Defendant shall not challenge the entry of this  
2 Consent Decree or this Court's jurisdiction to enter and enforce  
3 this Consent Decree.

4 III. PARTIES BOUND

5 2. This Consent Decree applies to and is binding upon the  
6 United States and upon Settling Work Defendant and its successors  
7 and assigns. Any change in ownership or corporate status of the  
8 Settling Work Defendant including, but not limited to, any  
9 transfer of assets or real or personal property, shall in no way  
10 alter such Settling Work Defendant's responsibilities under this  
11 Consent Decree or CD-1.

12 3. Settling Work Defendant shall provide a copy of this  
13 Consent Decree to each contractor hired to perform the Work (as  
14 defined below) required by this Consent Decree and to each person  
15 representing Settling Work Defendant with respect to the Site or  
16 the Work, and shall condition all contracts entered into  
17 hereunder upon performance of the Work in conformity with the  
18 terms of this Consent Decree. Settling Work Defendant or its  
19 contractor(s) shall provide written notice of the Consent Decree  
20 to any subcontractor(s) hired to perform any portion of the Work  
21 required by this Consent Decree. Settling Work Defendant shall  
22 nonetheless be responsible for ensuring that its contractor(s)  
23 and subcontractor(s) perform the Work contemplated herein in  
24 accordance with this Consent Decree. With regard to the  
25 activities undertaken pursuant to this Consent Decree, each  
26 contractor and subcontractor shall be deemed to be in a  
27 contractual relationship with the Settling Work Defendant within  
28 the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. §

1 9607(b)(3).

2 IV. DEFINITIONS

3 4. Unless otherwise expressly provided herein, terms used  
4 in this Consent Decree that are defined in CERCLA or in  
5 regulations promulgated under CERCLA shall have the meanings  
6 assigned to them in CERCLA or in such regulations. Whenever  
7 terms listed below are used in this Consent Decree or in the  
8 appendices attached hereto and incorporated hereunder, the  
9 following definitions shall apply:

10 "CERCLA" shall mean the Comprehensive Environmental  
11 Response, Compensation, and Liability Act of 1980, as amended, 42  
12 U.S.C. §§ 9601 et seq.

13 "Consent Decree" shall mean this Decree and all appendices  
14 attached hereto (listed in Section XXVI). In the event of  
15 conflict between this Decree and any appendix, this Decree shall  
16 control.

17 "Date of Entry" shall mean the date this Consent Decree is  
18 signed by the United States District Court for the Eastern  
19 District of California.

20 "Date of Lodging" shall mean the date this Consent Decree  
21 (or a true copy thereof) is lodged with the Clerk of the Court  
22 for the United States District Court for the Eastern District of  
23 California.

24 "Day" shall mean a calendar day unless expressly stated to  
25 be a working day. "Working day" shall mean a day other than a  
26 Saturday, Sunday, or federal holiday. In computing any period of  
27 time under this Consent Decree, where the last day would fall on  
28 a Saturday, Sunday, or federal holiday, the period shall run

1 until the close of business of the next working day.

2 "EPA" shall mean the United States Environmental Protection  
3 Agency and any successor departments or agencies of the United  
4 States.

5 "ESD-1" shall mean the Explanation of Significant  
6 Differences signed on September 6, 1996.

7 "ESD-2" shall mean the EPA Explanation of Significant  
8 Differences relating to the Operable Unit Two at the Site signed  
9 on March 30, 2001 by the Regional Administrator, EPA Region 9, or  
10 his/her delegate, and all attachments thereto. ESD-2 is attached  
11 as Appendix A.

12 "National Contingency Plan" or "NCP" shall mean the National  
13 Oil and Hazardous Substances Pollution Contingency Plan  
14 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
15 codified at 40 C.F.R. Part 300, and any amendments thereto.

16 "Natural Resources" shall have the meaning provided in  
17 Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

18 "Paragraph" shall mean a portion of this Consent Decree  
19 identified by an arabic numeral or an upper case letter.

20 "Parties" shall mean the United States, and the Settling  
21 Work Defendant.

22 "Plaintiff" shall mean the United States, on behalf of the  
23 United States Environmental Protection Agency.

24 "Preauthorization Decision Document" shall mean the document  
25 attached hereto as Appendix B, preauthorizing the Settling Work  
26 Defendant to submit claims to the United States pursuant to  
27 Section 111(a) of CERCLA, 42 U.S.C. § 9611(a).

28

1 "RCRA" shall mean the Solid Waste Disposal Act, as amended,  
2 42 U.S.C. §§ 6901 et seq. (also known as the Resource  
3 Conservation and Recovery Act).

4 "Remedial Actions" shall mean those activities to be  
5 undertaken by Settling Work Defendant pursuant to CD-1, or a  
6 portion of those activities to be undertaken by the Settling Work  
7 Defendant to implement the additional remedial actions selected  
8 in ESD-2, in accordance with plans approved by EPA.

9 "Relocation Plan" shall mean the document developed pursuant  
10 to Paragraph 11.a of this Consent Decree and approved by EPA, and  
11 any amendments thereto.

12 "Section" shall mean a portion of this Consent Decree  
13 identified by a roman numeral.

14 "Settling Work Defendant" shall mean the Settling Work  
15 Defendant, Chevron USA Inc.

16 "Site" shall mean the Purity Oil Superfund Site,  
17 encompassing approximately 7 acres, located at 3254 South Maple  
18 Avenue in Fresno, Fresno County, California and depicted  
19 generally on the map attached as Appendix C, and includes all  
20 places where hazardous substances have come to be located.

21 "United States" shall mean the United States of America,  
22 including all of its departments, agencies and instrumentalities.

23 "Waste Material" shall mean (1) any "hazardous substance"  
24 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any  
25 pollutant or contaminant under Section 101(33), 42 U.S.C.  
26 § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA,  
27 42 U.S.C. § 6903(27); or as any of the foregoing terms are  
28 defined under any appropriate or applicable provisions of

1 California law.

2 "Work" shall mean all activities the Settling Work Defendant  
3 is required to perform under this Consent Decree, except those  
4 required by Section XXV (Retention of Records).

5 V. GENERAL PROVISIONS

6 5. Objectives of the Parties

7 The objectives of the Parties in entering into this Consent  
8 Decree are to protect public health or welfare or the environment  
9 at the Site by the implementation of certain response actions at  
10 the Site by the Settling Work Defendant. A further objective of  
11 the Parties is to allow the Settling Work Defendant, through the  
12 use of the procedures set forth and developed by EPA pursuant to  
13 Section 111(a) of CERCLA, 42 U.S.C. § 9611(a), to submit claim(s)  
14 to EPA of up to \$1.5 million dollars in partial reimbursement of  
15 some of the costs to be incurred in implementing the response  
16 actions required by the CD-1, the ROD, ESD-1, and ESD-2. The  
17 Parties leave unchanged the obligations, tasks required to be  
18 performed, and respective rights and reservations which exist  
19 pursuant to CD-1, except to the extent any obligations are  
20 changed pursuant to this CD-2.

21 6. Commitments by Settling Work Defendant

22 Settling Work Defendant shall perform, or arrange for  
23 the performance of, the Work in accordance with this Consent  
24 Decree, ESD-2 and all Work plans and other plans and schedules  
25 set forth herein or developed by Settling Work Defendant and  
26 approved by EPA pursuant to this Consent Decree.

1           7.    Compliance With Applicable Law

2           All activities undertaken by Settling Work Defendant  
3 pursuant to this Consent Decree shall be performed in accordance  
4 with the requirements of all applicable federal and state laws  
5 and regulations. Settling Work Defendant must also comply with  
6 all applicable or relevant and appropriate requirements of all  
7 federal and state environmental laws as set forth in ESD-2 or as  
8 otherwise authorized pursuant to this Consent Decree. The  
9 activities conducted pursuant to this Consent Decree, if approved  
10 by EPA, shall be considered to be consistent with the NCP.

11           8.    Permits

12               a.    As provided in Section 121(e) of CERCLA, 42 U.S.C.  
13 § 9621(e), and Section 300.400(e) of the NCP, 40 C.F.R.  
14 § 300.400(e), no permit shall be required for any portion of the  
15 Work conducted entirely on-site (i.e., within the areal extent of  
16 contamination or in very close proximity to the contamination and  
17 necessary for implementation of the Work). Where any portion of  
18 the Work that is not on-site requires a federal or state permit  
19 or approval, Settling Work Defendant or its contractor shall  
20 submit timely and complete applications and take all other  
21 actions necessary to obtain all such permits or approvals.

22               b.    The Settling Work Defendant may seek relief under  
23 the provisions of Section XV (Force Majeure) of this Consent  
24 Decree for any delay in the performance of the Work resulting  
25 from a failure to obtain, or a delay in obtaining, any permit  
26 required for the Work.

27               c.    This Consent Decree is not, and shall not be  
28 construed to be, a permit issued pursuant to any federal or state

1 statute or regulation.

2 VI. PERFORMANCE OF THE WORK BY SETTTLING WORK DEFENDANT

3 9. Selection of Supervising Contractor

4 a. All aspects of the Work to be performed by  
5 Settling Work Defendant pursuant to this Consent Decree shall be  
6 arranged for and overseen by a Supervising Contractor. The  
7 Parties agree that the Supervising Contractor designated under  
8 CD-1 may be used as Supervising Contractor for the Work required  
9 by this Consent Decree. The Settling Work Defendant and the EPA  
10 only need to provide notification to the other if a new  
11 Supervising Contractor is to be used. The selection of a new  
12 Supervising Contractor shall be subject to disapproval by EPA.  
13 Within 10 days after the Date of Lodging, Settling Work Defendant  
14 shall notify EPA in writing of the name, title, and  
15 qualifications of any contractor proposed to be the Supervising  
16 Contractor. EPA will issue a notice of disapproval or an  
17 authorization to proceed. If at any time thereafter, Settling  
18 Work Defendant proposes to change the Supervising Contractor,  
19 Settling Work Defendant shall give such notice to EPA and must  
20 obtain an authorization to proceed from EPA before the new  
21 Supervising Contractor arranges for and oversees any Work under  
22 this Consent Decree.

23 b. If EPA disapproves a proposed Supervising  
24 Contractor, EPA will notify Settling Work Defendant in writing.  
25 Settling Work Defendant shall submit to EPA a list of  
26 contractors, including the qualifications of each contractor,  
27 that would be acceptable to Settling Work Defendant within 30  
28 days of receipt of EPA's disapproval of the contractor previously

1 proposed. EPA will provide written notice of the names of any  
2 contractor(s) that it disapproves and an authorization to proceed  
3 with respect to any of the other contractors. Settling Work  
4 Defendant may select any contractor from that list that is not  
5 disapproved and shall notify EPA of the name of the contractor  
6 selected within 21 days of EPA's authorization to proceed.

7 c. If EPA fails to provide written notice of its  
8 authorization to proceed or disapproval as provided in this  
9 Paragraph and this failure prevents the Settling Work Defendant  
10 from meeting one or more deadlines in a plan approved by the EPA  
11 pursuant to this Consent Decree, Settling Work Defendant may seek  
12 relief under the provisions of Section XV (Force Majeure).

13 10. Incorporation of the Activities Under the Consent  
14 Decree

15 a. All activities or work, including operation and  
16 maintenance, required pursuant to CD-1 shall be unaffected by  
17 this Consent Decree, and remain fully enforceable under CD-1.

18 11. Remedial Action(s) Required by ESD-2

19 a. Unless previously provided, Settling Work  
20 Defendant shall, within 30 days after the Date of Lodging of this  
21 Consent Decree, submit to EPA a plan ("Relocation Plan")  
22 outlining the scheduling and implementation of the remedial  
23 action(s) at the Site required by ESD-2. Upon its approval by  
24 EPA, the Relocation Plan shall be incorporated into and become  
25 enforceable under this Consent Decree.

26 b. The Relocation Plan shall include the following:  
27 (1) the schedule for implementation and completion of all  
28 Relocation Activities; (2) the contractors that will directly  
implement and/or coordinate the Relocation activities; (3) the



1 location of all temporary relocation facilities; and (4) the  
2 location of all permanent relocation facilities.

3 12. Settling Work Defendant's Obligation To Perform Further  
4 Response Actions

5 If EPA selects further response actions for the Site, the  
6 Settling Work Defendant shall undertake such further response  
7 actions to the extent that the reopener conditions in Paragraph  
8 58 or Paragraph 59 (United States' reservations of rights based  
9 on unknown conditions or new information) or Paragraph 61  
10 (Plaintiff's general reservations of rights) are satisfied.  
11 Settling Work Defendant may invoke the procedures set forth in  
12 Section XIX (Dispute Resolution) to dispute (1) EPA's  
13 determination that the remedial action is not protective of human  
14 health and the environment, (2) EPA's selection of the further  
15 response actions ordered as arbitrary and capricious or otherwise  
16 not in accordance with law, or (3) EPA's determination that the  
17 Settling Work Defendant's liability for the further response  
18 actions requested is reserved in Paragraphs 58, 59, or 61 or  
19 otherwise not barred by the Covenant Not to Sue set forth in  
20 Section XVIII. Disputes pertaining to whether the Remedial  
21 Action is protective or to EPA's selection of further response  
22 actions shall be resolved pursuant to Paragraph 44 (record  
23 review).

24 13. Notwithstanding any provision of this Consent Decree,  
25 the United States hereby retains all of its information-gathering  
26 and inspection authorities and rights, including enforcement  
27 authorities related thereto, under CERCLA, RCRA and any other  
28 applicable statutes or regulations.

VII. ACCESS

14. Commencing upon the Date of Lodging of this Consent Decree, the Settling Work Defendant agrees to provide the United States, and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Work Defendant, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Assessing the need for, planning, or implementing response actions at or near the Site;
- d. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Work Defendant or its agents, consistent with Section XX (Access to Information); and
- e. Assessing Settling Work Defendant's compliance with this Consent Decree.

15. To the extent that the Site or any other property to which access is required for the implementation of the Relocation Plan is owned or controlled by persons other than Settling Work Defendant, Settling Work Defendant shall use best efforts to secure from such persons access for Settling Work Defendant, as well as for the United States and its representatives including, but not limited to, their contractors, as necessary to effectuate

1 this Consent Decree. For purposes of this Paragraph, "best  
2 efforts" does not include the payment of reasonable sums of money  
3 in consideration of access solely to the Tall Trees Mobile Home  
4 Park. If any access required to complete the Work is not  
5 obtained within 45 days of the Date of Entry of this Consent  
6 Decree, Settling Work Defendant shall promptly notify the United  
7 States in writing, and shall include in that notification a  
8 summary of the steps Settling Work Defendant has taken to attempt  
9 to obtain access. The United States may, as it deems  
10 appropriate, assist Settling Work Defendant in obtaining access.  
11 Settling Work Defendant shall reimburse the United States for all  
12 costs incurred by the United States in bringing an action to  
13 secure access. This paragraph does not alter or modify any  
14 requirements pertaining to obtaining access provided for in CD-1.

15 16. Notwithstanding any provision of this Consent Decree,  
16 the United States retains all of its access authorities and  
17 rights, including enforcement authorities related thereto, under  
18 CERCLA, RCRA and any other applicable statute or regulations.

19 VIII. REPORTING REQUIREMENTS

20 17. In addition to any other requirement of this Consent  
21 Decree, Settling Work Defendant shall submit to EPA two copies of  
22 written monthly progress reports that: (a) describe the actions  
23 that have been taken toward achieving compliance with this  
24 Consent Decree during the previous month; (b) include a summary  
25 of all data received or generated by Settling Work Defendant or  
26 its contractors or agents in the previous month; (c) identify all  
27 plans and other deliverables required by this Consent Decree  
28 completed and submitted during the previous month; (d) describe

1 all actions which are scheduled for the next month and provide  
2 other information relating to the progress of construction; (e)  
3 include information regarding percentage of completion,  
4 unresolved delays encountered or anticipated that may affect the  
5 future schedule for implementation of the Work, and a description  
6 of efforts made to mitigate those delays or anticipated delays.  
7 Settling Work Defendant shall submit these progress reports to  
8 EPA by the tenth day of every month following the lodging of this  
9 Consent Decree until EPA notifies the Settling Work Defendant  
10 pursuant to Paragraph 28 of Section XI (Certification of  
11 Completion). If requested by EPA, Settling Work Defendant shall  
12 also provide briefings for EPA to discuss the progress of the  
13 Work. The reporting requirement required by this paragraph can  
14 be completed in conjunction with the reporting requirements by  
15 CD-1.

16 18. The Settling Work Defendant shall notify EPA of any  
17 change in the schedule described in the monthly progress report  
18 for the performance of any activity including, but not limited  
19 to, implementation of the Relocation Plan, no later than four  
20 days prior to the performance of the activity.

21 19. Upon the occurrence of any event during performance of  
22 the Work that Settling Work Defendant is required to report  
23 pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section  
24 304 of the Emergency Planning and Community Right-to-know Act of  
25 1986 ("EPCRA"), 42 U.S.C. § 11004, Settling Work Defendant shall  
26 within 24 hours of the onset of such event orally notify the EPA  
27 Project Coordinator or the Alternate EPA Project Coordinator (in  
28 the event of the unavailability of the EPA Project Coordinator)

1 or, in the event that neither the EPA Project Coordinator or  
2 Alternate EPA Project Coordinator is available, the Emergency  
3 Response Section, Region 9, United States Environmental  
4 Protection Agency. These reporting requirements are in addition  
5 to the reporting required by CERCLA Section 103 or EPCRA Section  
6 304.

7 20. Within 20 days of the onset of such an event, Settling  
8 Work Defendant shall furnish to Plaintiff a written report,  
9 signed by the Settling Work Defendant's Project Coordinator,  
10 setting forth the events which occurred and the measures taken,  
11 and to be taken, in response thereto. Within 30 days of the  
12 conclusion of such an event, Settling Work Defendant shall submit  
13 a report setting forth all actions taken in response thereto.

14 21. Settling Work Defendant shall submit two copies of all  
15 plans, reports, and data required the Relocation Plan, or any  
16 other approved plans to EPA in accordance with the schedules set  
17 forth in such plans.

18 22. All reports and other documents submitted by Settling  
19 Work Defendant to EPA (other than the monthly progress reports  
20 referred to above) that purport to document Settling Work  
21 Defendant's compliance with the terms of this Consent Decree  
22 shall be signed by an authorized representative of the Settling  
23 Work Defendant.

24 23. All plans, reports, and other items required to be  
25 submitted to EPA under this Consent Decree shall, upon approval  
26 or modification by EPA, be enforceable under this Consent Decree.  
27 In the event EPA approves or modifies a portion of a plan,  
28 report, or other item required to be submitted to EPA under this

1 Consent Decree, the approved or modified portion shall be  
2 enforceable under this Consent Decree.

3 IX. PROJECT COORDINATORS

4 24. The Parties agree that the Project Coordinators  
5 designated under CD-1 may be used as Project Coordinators for the  
6 Work required by this Consent Decree. The Settling Work  
7 Defendant and the EPA only need to provide notification to the  
8 other if a new Project Coordinator is to be used. In this event,  
9 the new Project Coordinator shall be named pursuant to the  
10 requirements of Paragraph 39 of CD-1.

11 25. EPA's Project Coordinator and Alternate Project  
12 Coordinator shall have the authority lawfully vested in a  
13 Remedial Project Manager ("RPM") and an On-Scene Coordinator  
14 ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300, and  
15 shall have the authority, consistent with the National  
16 Contingency Plan, to halt any Work required by this Consent  
17 Decree and to take any necessary response action when he or she  
18 determines that conditions at the Site constitute an emergency  
19 situation or may present an immediate threat to public health or  
20 welfare or the environment due to the release or threatened  
21 release of Waste Material.

22 26. EPA's Project Coordinator and the Settling Work  
23 Defendant's Project Coordinator will meet, at a minimum, on a  
24 monthly basis.

25 X. FINANCIAL DEMONSTRATIONS

26 27. Within 30 days of entry of this Consent Decree,  
27 Settling Work Defendant shall demonstrate the payment of, or  
28 readiness to make available, the sum of \$2.5 million toward the

1 Site work (\$1 million to be paid by Settling Work Defendant,  
2 another \$1.5 million to be funded by Settling Work Defendant but  
3 which is subject to reimbursement by EPA pursuant to the  
4 Preauthorization Decision Document), including but not limited  
5 to, payment of funds toward the response actions required by CD-1  
6 and the additional response actions required by ESD-2. Such  
7 demonstration may include submission of copies of checks paid,  
8 invoices, progress reports, contracts entered into, or  
9 establishment of an escrow account.

10 XI. CERTIFICATION OF COMPLETION

11 28. Completion of the Remedial Action

12 Certification of Completion of the activities required  
13 by this Consent Decree shall be performed in conjunction with, and  
14 pursuant to, the certification of completion of Remedial Action  
15 provided for in Section XIV, Paragraphs 45 and 46 in CD-1.  
16 Completion of the activities required by the approved Relocation  
17 Plan shall not affect Settling Work Defendant's obligations under  
18 this CD-1.

19 XII. EMERGENCY RESPONSE

20 29. In the event of any action or occurrence during the  
21 performance of the Work that causes or threatens a release of  
22 Waste Material from the Site that constitutes an emergency  
23 situation or may present an immediate threat to public health or  
24 welfare or the environment, Settling Work Defendant shall,  
25 subject to Paragraph 30, immediately take all appropriate action  
26 to prevent, abate, or minimize such release or threat of release,  
27 and shall immediately notify the EPA's Project Coordinator or, if  
28 the Project Coordinator is unavailable, EPA's Alternate Project

1 Coordinator. If neither of these persons is available, the  
2 Settling Work Defendant shall notify the EPA Emergency Response  
3 Unit, Region 9. Settling Work Defendant shall take such actions  
4 in consultation with EPA's Project Coordinator or other available  
5 authorized EPA officer and in accordance with all applicable  
6 provisions of the Health and Safety Plans, the Contingency Plans,  
7 and any other applicable plans or documents developed and  
8 approved pursuant to the CD-1. In the event that Settling Work  
9 Defendant fails to take appropriate response action as required  
10 by this Section, and EPA takes such action instead, Settling Work  
11 Defendant shall reimburse EPA all costs of the response action  
12 not inconsistent with the NCP.

13 30. Nothing in the preceding Paragraph or in this Consent  
14 Decree shall be deemed to limit any authority of the United  
15 States to: (a) take all appropriate actions to protect human  
16 health or the environment or to prevent, abate, respond to, or  
17 minimize an actual or threatened release of Waste Material on,  
18 at, or from the Site; or (b) direct or order such action, or seek  
19 an order from the Court, to protect human health or the  
20 environment or to prevent, abate, respond to, or minimize an  
21 actual or threatened release of Waste Material on, at, or from  
22 the Site, subject to Section XXI (Covenants by the United  
23 States).

24 XIII: CLAIMS AGAINST THE SUPERFUND

25 31. a. Pursuant to Sections 111(a)(1), 112, and  
26 122(b)(1) of CERCLA, 42 U.S.C. §§ 9611(a)(1), 9612, and  
27 9622(b)(1), the Settling Work Defendant may submit a claim for  
28 reimbursement to the Hazardous Substance Superfund (the Fund) for



1 a portion of the necessary costs incurred in implementing  
2 response actions at the Site in accordance with CD-1, this  
3 Consent Decree, and Appendix B (Preauthorization Decision  
4 Document or "PDD"). Reimbursement from the Fund shall be subject  
5 to the provisions of Section 112 of CERCLA, 42 U.S.C. § 9612, the  
6 regulations set forth in 40 C.F.R. Part 307, and the applicable  
7 claims and audit procedures outlined in Appendix D. In no event  
8 shall Settling Work Defendant's claim(s) against the Fund exceed  
9 the sum of \$1,500,000. Settling Work Defendant's claim(s)  
10 against the Fund shall cover the necessary costs associated with  
11 implementing the remedial actions in accordance with CD-1, this  
12 Consent Decree, and the PDD. Settling Work Defendant's claim(s)  
13 against the Fund shall not include any attorneys' fees, except  
14 those which are directly necessary for the implementation of the  
15 relocation activities (e.g., attorneys' fees for drawing any  
16 necessary contracts with vendors), unless permitted under 40 CFR  
17 Part 307. Settling Work Defendant's claim(s) shall not include  
18 any other types of attorneys' fees (e.g., fees related to  
19 evaluating or establishing Settling Work Defendant's submissions  
20 under, or compliance with, the terms of this Consent Decree, or  
21 advising or representing Settling Work Defendant in any action or  
22 dispute resolution under this Consent Decree or in any action or  
23 proceeding to enforce this Consent Decree).

24       b. If it is subsequently determined that it is necessary  
25 to modify the actions that the EPA preauthorized, or if the  
26 Settling Work Defendant undertakes additional response actions  
27 approved by EPA, Settling Work Defendant may submit to EPA a  
28 revised application for preauthorization, to the extent that

1 claims submitted under the revised application do not, in  
2 combination with any previously approved and paid claim(s),  
3 exceed the \$1,500,000 limit provided in paragraph 31(a) above.

4 32. If the Agency denies a claim in whole or in part, it  
5 shall notify the Settling Work Defendant of the reason(s) for  
6 such denial. Within 30 days after receiving notice of EPA's  
7 decisions, the Settling Work Defendant may request an  
8 administrative hearing as provided in section 112(b)(2) of  
9 CERCLA, 42 U.S.C. § 9612(b)(2), and 40 CFR Part 305. If EPA  
10 fails to pay Settling Work Defendant's claim within sixty (60)  
11 days of receipt of a perfected claim, interest shall accrue on  
12 the amount due and payable to the Settling Work Defendant.

13 33. Pursuant to Section 112(c)(1) of CERCLA, 42 U.S.C. §  
14 9612(c)(1), Settling Work Defendant hereby subrogates its rights  
15 to the United States to recover from other parties any costs  
16 reimbursed to the Settling Work Defendant under this Section, and  
17 the Settling Work Defendant shall assist in any action to recover  
18 these costs which may be initiated by the United States. The  
19 Settling Work Defendant and the Settling Work Defendant's  
20 contractor(s) shall furnish the personnel, services, documents,  
21 and materials needed to assist the United States in the  
22 collection of evidence to document work performed and costs  
23 expended by the Settling Work Defendant or its' contractor(s) at  
24 the Site in order to aid in cost recovery efforts. Assistance  
25 shall also include providing all requested assistance in the  
26 interpretation of evidence and costs, and providing requested  
27 testimony. All of the Settling Work Defendant's or its  
28 contractor's contracts for implementing the Preauthorization

1 Decision Document shall include a specific requirement that the  
2 contractors and subcontractors agree to provide this cost  
3 recovery assistance.

4 34. The Settling Work Defendant shall not make any claim  
5 against the Fund except as provided by this Section.

6 XIV. INDEMNIFICATION AND INSURANCE

7 35. a. The United States does not assume any liability by  
8 entering into this agreement or by virtue of any designation of  
9 Settling Work Defendant as EPA's authorized representative under  
10 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Work  
11 Defendant shall indemnify, save and hold harmless the United  
12 States and their officials, agents, employees, contractors,  
13 subcontractors, or representatives for or from any and all claims  
14 or causes of action arising from, or on account of, negligent or  
15 other wrongful acts or omissions of Settling Work Defendant, its  
16 officers, directors, employees, agents, contractors,  
17 subcontractors, and any persons acting on its behalf or under its  
18 control, in carrying out activities pursuant to this Consent  
19 Decree including, but not limited to, any claims arising from any  
20 designation of Settling Work Defendant as EPA's authorized  
21 representative under Section 104(e) of CERCLA, 42 U.S.C. §  
22 9604(e). Further, the Settling Work Defendant agrees to  
23 reimburse the United States for all costs it incurs including,  
24 but not limited to, attorneys fees and other expenses of  
25 litigation and settlement arising from, or on account of, claims  
26 made against the United States based on negligent or other  
27 wrongful acts or omissions of Settling Work Defendant, its  
28 officers, directors, employees, agents, contractors,

1 subcontractors, and any persons acting on its behalf or under its  
2 control, in carrying out activities pursuant to this Consent  
3 Decree. The United States shall not be held out as a party to  
4 any contract entered into by or on behalf of Settling Work  
5 Defendant in carrying out activities pursuant to this Consent  
6 Decree. Neither the Settling Work Defendant nor any such  
7 contractor shall be considered an agent of the United States.

8           b. The United States shall give Settling Work  
9 Defendant notice of any claim for which the United States plans  
10 to seek indemnification pursuant to Paragraph 35.a and shall  
11 consult with Settling Work Defendant prior to settling such  
12 claim.

13           36. Except as set forth above in Section XIII, Paragraphs  
14 31 to 34, Settling Work Defendant waives all claims against the  
15 United States for damages or reimbursement or for set-off of any  
16 payments made or to be made to the United States, arising from or  
17 on account of any contract, agreement, or arrangement between  
18 Settling Work Defendant and any person for performance of Work on  
19 or relating to the Site including, but not limited to, claims on  
20 account of construction delays. In addition, Settling Work  
21 Defendant shall indemnify and hold harmless the United States  
22 with respect to any and all claims for damages or reimbursement  
23 arising from or on account of any contract, agreement, or  
24 arrangement between Settling Work Defendant and any person for  
25 performance of Work on or relating to the Site including, but not  
26 limited to, claims on account of construction delays.

XV. FORCE MAJEURE

1  
2 37. "Force majeure," for purposes of this Consent Decree,  
3 is defined as any event arising from causes beyond the control of  
4 Settling Work Defendant, of any entity controlled by Settling  
5 Work Defendant, or of Settling Work Defendant's contractors, that  
6 delays or prevents the performance of any obligation under this  
7 Consent Decree despite Settling Work Defendant's best efforts to  
8 fulfill the obligation. The requirement that the Settling Work  
9 Defendant exercise "best efforts to fulfill the obligation"  
10 includes using best efforts to anticipate any potential force  
11 majeure event and best efforts to address the effects of any  
12 potential force majeure event: (1) as it is occurring; and (2)  
13 following the potential force majeure event, such that the delay  
14 is minimized to the greatest extent possible. "Force Majeure"  
15 does not include financial inability to complete the Work.

16 38. If any event occurs or has occurred that may delay the  
17 performance of any obligation under this Consent Decree, whether  
18 or not caused by a force majeure event, the Settling Work  
19 Defendant shall notify orally EPA's Project Coordinator or, in  
20 his or her absence, EPA's Alternate Project Coordinator or, in  
21 the event both of EPA's designated representatives are  
22 unavailable, the Director of the Superfund Division, EPA Region  
23 9, within 3 days of the time Settling Work Defendant first knew  
24 that the event might cause a delay. Within 10 days thereafter,  
25 Settling Work Defendant shall provide in writing to EPA an  
26 explanation and description of the reasons for the delay; the  
27 anticipated duration of the delay; all actions taken or to be  
28 taken to prevent or minimize the delay; a schedule for

1 implementation of any measures to be taken to prevent or mitigate  
2 the delay or the effect of the delay; the Settling Work  
3 Defendant's rationale for attributing such delay to a force  
4 majeure event if it intends to assert such a claim; and a  
5 statement as to whether, in the opinion of the Settling Work  
6 Defendant, such event may cause or contribute to an endangerment  
7 to public health, welfare or the environment. The Settling Work  
8 Defendant shall include with any notice all available  
9 documentation supporting its claim that the delay was  
10 attributable to a force majeure. Failure to comply with the  
11 above requirements shall preclude Settling Work Defendant from  
12 asserting any claim of force majeure for that event for the  
13 period of time of such failure to comply, and for any additional  
14 delay caused by such failure. Settling Work Defendant shall be  
15 deemed to know of any circumstance of which Settling Work  
16 Defendant, any entity controlled by Settling Work Defendant, or  
17 Settling Work Defendant's contractors knew or should have known.

18 39. If EPA agrees that the delay or anticipated delay is  
19 attributable to a force majeure event, the time for performance  
20 of the obligations under this Consent Decree that are affected by  
21 the force majeure event will be extended by EPA for such time as  
22 is necessary to complete those obligations. An extension of the  
23 time for performance of the obligations affected by the force  
24 majeure event shall not, of itself, extend the time for  
25 performance of any other obligation. If EPA does not agree that  
26 the delay or anticipated delay has been or will be caused by a  
27 force majeure event, EPA will notify the Settling Work Defendant  
28 in writing of its decision. If EPA agrees that the delay is

1 attributable to a force majeure event, EPA will notify the  
2 Settling Work Defendant in writing of the length of the  
3 extension, if any, for performance of the obligations affected by  
4 the force majeure event.

5       40. If the Settling Work Defendant elects to invoke the  
6 dispute resolution procedures set forth in Section XVI (Dispute  
7 Resolution), it shall do so no later than 15 days after receipt  
8 of EPA's notice. In any such proceeding, Settling Work Defendant  
9 shall have the burden of demonstrating by a preponderance of the  
10 evidence that the delay or anticipated delay has been or will be  
11 caused by a force majeure event, that the duration of the delay  
12 or the extension sought was or will be warranted under the  
13 circumstances, that best efforts were exercised to avoid and  
14 mitigate the effects of the delay, and that Settling Work  
15 Defendant complied with the requirements of Paragraphs 37 and 38.  
16 If Settling Work Defendant carries this burden, the delay at  
17 issue shall be deemed not to be a violation by Settling Work  
18 Defendant of the affected obligation of this Consent Decree  
19 identified to EPA and the Court.

20                   XIX. DISPUTE RESOLUTION

21       41. Unless otherwise expressly provided in this Consent  
22 Decree, the dispute resolution procedures of this Section shall  
23 be the exclusive mechanism to resolve disputes arising under or  
24 with respect to this Consent Decree. However, the procedures set  
25 forth in this Section shall not apply to actions by the United  
26 States to enforce obligations of the Settling Work Defendant that  
27 have not been disputed in accordance with this Section.

1           42. Any dispute that arises under or with respect to this  
2 Consent Decree shall in the first instance be the subject of  
3 informal negotiations between the parties to the dispute. The  
4 period for informal negotiations shall not exceed 20 days from  
5 the time the dispute arises, unless it is modified by written  
6 agreement of the parties to the dispute. The dispute shall be  
7 considered to have arisen when one party sends the other party a  
8 written Notice of Dispute.

9           43. a. In the event that the parties cannot resolve a  
10 dispute by informal negotiations under the preceding Paragraph,  
11 the position advanced by EPA shall be considered binding unless,  
12 within 7 days after the conclusion of the informal negotiation  
13 period, Settling Work Defendant invokes the formal dispute  
14 resolution procedures of this Section by serving on the United  
15 States and the State a written Statement of Position on the  
16 matter in dispute including, but not limited to, any factual  
17 data, analysis or opinion supporting that position and any  
18 supporting documentation relied upon by Settling Work Defendant.  
19 The Statement of Position shall specify Settling Work Defendant's  
20 position as to whether formal dispute resolution should proceed  
21 under Paragraph 44 or Paragraph 45.

22           b. Within 7 days after receipt of Settling Work  
23 Defendant's Statement of Position, EPA will serve on Settling  
24 Work Defendant its Statement of Position including, but not  
25 limited to, any factual data, analysis, or opinion supporting  
26 that position and all supporting documentation relied upon by  
27 EPA. EPA's Statement of Position shall include a statement as to  
28 whether formal dispute resolution should proceed under Paragraph



1 44 or 45. Within 5 days after receipt of EPA's Statement of  
2 Position, the Settling Work Defendant may submit a Reply.

3 c. If there is disagreement between EPA and Settling  
4 Work Defendant as to whether dispute resolution should proceed  
5 under Paragraph 44 or 45, the parties shall follow the procedures  
6 set forth in the paragraph determined by EPA to be applicable.  
7 However, if Settling Work Defendant ultimately appeals to the  
8 Court to resolve the dispute, the Court shall determine which  
9 paragraph is applicable in accordance with the standards of  
10 applicability set forth in Paragraphs 44 and 45.

11 44. Formal dispute resolution for disputes pertaining to  
12 the selection or adequacy of any response action and all other  
13 disputes that are accorded review on the administrative record  
14 under applicable principles of administrative law shall be  
15 conducted pursuant to the procedures set forth in this Paragraph.  
16 For purposes of this Paragraph, the adequacy of any response  
17 action includes, without limitation: (1) the adequacy or  
18 appropriateness of plans, procedures to implement plans, or any  
19 other items requiring approval by EPA under this Consent Decree;  
20 and (2) the adequacy of the performance of response actions taken  
21 pursuant to this Consent Decree. Nothing in this Consent Decree  
22 shall be construed to allow any dispute by Settling Work  
23 Defendant regarding the validity of ESD-2's provisions.

24 a. An administrative record of the dispute shall be  
25 maintained by EPA and shall contain all statements of position,  
26 including supporting documentation, submitted pursuant to this  
27 Section. Where appropriate, EPA may allow submission of  
28 supplemental statements of position by the parties to the

1 dispute.

2           b. The Director of the Superfund Division, EPA Region  
3 9, will issue a final administrative decision resolving the  
4 dispute based on the administrative record described in Paragraph  
5 44.a. This decision shall be binding upon the Settling Work  
6 Defendant, subject only to the right to seek judicial review  
7 pursuant to Paragraph 44.c and 44.d.

8           c. Any administrative decision made by EPA pursuant  
9 to Paragraph 44.b shall be reviewable by this Court, provided  
10 that a motion for judicial review of the decision is filed by a  
11 Settling Work Defendant with the Court and served on the United  
12 States within 10 days of receipt of EPA's decision. The motion  
13 shall include a description of the matter in dispute, the efforts  
14 made by the parties to resolve it, the relief requested, and the  
15 schedule, if any, within which the dispute must be resolved to  
16 ensure orderly implementation of this Consent Decree. The United  
17 States may file a response to Settling Work Defendant's motion.

18           d. In proceedings on any dispute governed by this  
19 Paragraph, Settling Work Defendant shall have the burden of  
20 demonstrating that the decision of the Superfund Division  
21 Director is arbitrary and capricious or otherwise not in  
22 accordance with law. Judicial review of EPA's decision shall be  
23 on the administrative record compiled pursuant to Paragraph 44.a.

24           45. Formal dispute resolution for disputes that neither  
25 pertain to the selection or adequacy of any response action nor  
26 are otherwise accorded review on the administrative record under  
27 applicable principles of administrative law, including disputes  
28 under Paragraphs 9.a, 9.b and 39, shall be governed by this

1 Paragraph.

2           a. Following receipt of the Settling Work Defendant's  
3 Statement of Position submitted pursuant to Paragraph 43.a, the  
4 Director of the Superfund Division, EPA Region 9, will issue a  
5 final decision resolving the dispute. The Superfund Division  
6 Director's decision shall be binding on the Settling Work  
7 Defendant unless, within 10 days of receipt of the decision, the  
8 Settling Work Defendant files with the Court and serves on the  
9 United States a motion for judicial review of the decision  
10 setting forth the matter in dispute, the efforts made by the  
11 parties to resolve it, the relief requested, and the schedule, if  
12 any, within which the dispute must be resolved to ensure orderly  
13 implementation of the Consent Decree. The United States may file  
14 a response to the Settling Work Defendant's motion.

15           b. Notwithstanding Paragraph M of Section I  
16 (Background) of this Consent Decree, judicial review of any  
17 dispute governed by this Paragraph shall be governed by  
18 applicable principles of law.

19           46. The invocation of formal dispute resolution procedures  
20 under this Section shall not extend, postpone or affect in any  
21 way any obligation of the Settling Work Defendant under this  
22 Consent Decree, not directly in dispute, unless EPA or the Court  
23 agrees otherwise. Stipulated penalties with respect to the  
24 disputed matter shall continue to accrue, but payment shall be  
25 stayed pending resolution of the dispute as provided in Paragraph  
26 54. Notwithstanding the stay of payment, stipulated penalties  
27 shall accrue from the first day of noncompliance with any  
28 applicable provision of this Consent Decree. In the event that

the Settling Work Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XVII. STIPULATED PENALTIES

47. Settling Work Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 48 and 49 to the United States, on behalf of the United States Environmental Protection Agency, for failure to comply with the requirements of this Consent Decree as specified below, unless excused under Section XV (Force Majeure). "Compliance" by the Settling Work Defendant shall include completion of the activities under this Consent Decree or the Relocation Plan or other plan approved under this Consent Decree.

48. The following stipulated penalties shall accrue per violation per day for Settling Work Defendant's failure to submit the Relocation Plan:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 100	1 - 7 days
\$ 500	8 - 14 days
\$ 750	15 - 21 days
\$1,000	22 - 28 days
\$2,000	29 - 35 days
\$2,500	36 days and beyond

49. The following stipulated penalties shall accrue per violation per day for Settling Work Defendant's failure to submit timely or adequate reports or other written document(s) other than that identified in Paragraph 48 and for any other noncompliance with this Consent Decree:

<u>Penalty Per Violation</u>	<u>Period of Noncompliance</u>
<u>Per Day</u>	
\$ 300	1 - 7 days
\$ 500	8 - 14 days
\$ 750	15 - 21 days
\$1,000	22 days and beyond

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 44.b or 45.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Work Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

51. Following EPA's determination that Settling Work Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Work Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Work Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the

1 Settling Work Defendant of a violation.

2 52. All penalties accruing under this Section shall be due  
3 and payable to the United States within 30 days of the Settling  
4 Work Defendant's receipt from EPA of a demand for payment of the  
5 penalties, unless the Settling Work Defendant invokes the dispute  
6 Resolution procedures under Section XV (Dispute Resolution). All  
7 payments to the United States under this section shall be paid by  
8 certified or cashier's check(s) made payable to "EPA Hazardous  
9 Substances Superfund," shall be mailed to Region IX, Attention:  
10 Superfund Accounting, P.O. Box 360863 A, Pittsburgh, PA 15251,  
11 shall indicate that the payment is for stipulated penalties, and  
12 shall reference EPA Region 9 and Site/Spill ID No. 0921, the DOJ  
13 Case Number 90-11-2-355, and the name and address of the party  
14 making payment. Copies of check(s) tendered pursuant to this  
15 Section, and any accompanying transmittal letter(s), shall be  
16 sent to the United States as provided in Section XXII (Notices  
17 and Submissions).

18 53. The payment of penalties shall not alter in any way  
19 Settling Work Defendant's obligation to complete the performance  
20 of the Work required under this Consent Decree.

21 54. Penalties shall continue to accrue as provided in  
22 Paragraph 46 during any dispute resolution period, but need not  
23 be paid until the following:

24 a. If the dispute is resolved by agreement or by a  
25 decision of EPA that is not appealed to this Court, accrued  
26 penalties determined to be owing shall be paid to EPA within 15  
27 days of the agreement or the receipt of EPA's decision or order;  
28

1           b. If the dispute is appealed to this Court and the  
2 United States prevails in whole or in part, the Settling Work  
3 Defendant shall pay all accrued penalties determined by the Court  
4 to be owing to EPA within 60 days of receipt of the Court's  
5 decision or order, except as provided in Subparagraph c, below;

6           c. If the District Court's decision is appealed by  
7 either Party, the Settling Work Defendant shall pay all accrued  
8 penalties determined by the District Court to be owing to the  
9 United States into an interest-bearing escrow account within 60  
10 days of receipt of the Court's decision or order. Penalties  
11 shall be paid into this account as they continue to accrue, at  
12 least every 60 days. Within 15 days of receipt of the final  
13 appellate court decision, the escrow agent shall pay the balance  
14 of the account to EPA or to the Settling Work Defendant to the  
15 extent that it prevails.

16       55. a. If the Settling Work Defendant fails to pay  
17 stipulated penalties when due, the United States may institute  
18 proceedings to collect the penalties, as well as interest. The  
19 Settling Work Defendant shall pay Interest on the unpaid balance,  
20 which shall begin to accrue on the date of demand made pursuant  
21 to Paragraph 52.

22           b. Nothing in this Consent Decree shall be construed  
23 as prohibiting, altering, or in any way limiting the ability of  
24 the United States to seek any other remedies or sanctions  
25 available by virtue of a Settling Work Defendant's violation of  
26 this Consent Decree or of the statutes and regulations upon which  
27 it is based including, but not limited to, penalties pursuant to  
28 Section 122(1) of CERCLA, 42 U.S.C. § 9622(1). Provided, however,

1 that the United States shall not seek civil penalties pursuant to  
2 Section 122(1) of CERCLA for any violation for which a stipulated  
3 penalty is provided herein, except in the case of a willful  
4 violation of the Consent Decree.

5 56. Notwithstanding any other provision of this Section,  
6 the United States may, in its unreviewable discretion, waive any  
7 portion of stipulated penalties that have accrued pursuant to  
8 this Consent Decree.

9 XVIII. COVENANTS BY THE UNITED STATES

10 57. a. In consideration of the actions that will be  
11 performed by the Settling Work Defendant under the terms of this  
12 Consent Decree, and except as specifically provided in Paragraphs  
13 58, 59, 61.a, and 61.b of this Section, and Section XXI of CD-1,  
14 the United States covenants not to sue or to take administrative  
15 action pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C.  
16 §§ 9606 and 9607(a) and Section 7003 of RCRA, 42 U.S.C. § 6973,  
17 against the Settling Work Defendant, Chevron Corporation, Chevron  
18 Capital U.S.A. Inc., Chevron Chemical Company, Chevron Oil  
19 Finance Company, Chevron Pipe Line Company, Chevron Environmental  
20 Management Company, Huntington Beach Company, and the Pittsburgh  
21 & Midway Coal Mining Company, relating to the Site and Natural  
22 Resource Damages, provided that none of the foregoing persons or  
23 entities has liability with respect to the Site independent of  
24 that person's or that entity's affiliation with the Settling Work  
25 Defendant. Except with respect to future liability, these  
26 covenants not to sue or take administrative action shall take  
27 effect for Settling Work Defendant upon the Date of Entry of this  
28 Consent Decree. With respect to future liability, these



1 covenants not to sue shall take effect upon the Certification of  
2 Completion of Remedial Action by EPA pursuant to Paragraph 28 of  
3 Section XI (Certification of Completion). These covenants not to  
4 sue or take administrative action are conditioned upon  
5 satisfactory performance by Settling Work Defendant of its  
6 obligations under this Consent Decree. These covenants not to  
7 sue extend only to the persons or entities identified in this  
8 subparagraph and do not extend to any other person or entity.

9       58. United States' Pre-certification Reservations

10           a. Notwithstanding any other provision of this Consent  
11 Decree, the United States reserves, and this Consent Decree is  
12 without prejudice to, the right to institute proceedings in this  
13 action or in a new action against the Settling Work Defendant or  
14 to issue an administrative order compelling Settling Work  
15 Defendant (1) to perform further response actions relating to the  
16 Site, or (2) to reimburse the United States for additional costs  
17 of response if, prior to Certification of Completion of the  
18 Remedial Action

19           (i) conditions at the Site, previously unknown to EPA,  
20           are discovered, or

21           (ii) information, previously unknown to EPA, is  
22           received, in whole or in part,

23 and these previously unknown conditions or information together  
24 with any other relevant information indicates that the Remedial  
25 Action is not protective of human health or the environment.

26       59. United States' Post-certification Reservations

27       Notwithstanding any other provision of this Consent Decree,  
28 the United States reserves, and this Consent Decree is without

1 prejudice to, the right to institute proceedings in this action  
2 or in a new action against the Settling Work Defendant or to  
3 issue an administrative order to compel Settling Work Defendant  
4 (1) to perform further response actions relating to the Site, or  
5 (2) to reimburse the United States for additional costs of  
6 response if, subsequent to Certification of Completion of the  
7 Remedial Action

8 (i) conditions at the Site, previously unknown to EPA,  
9 are discovered, or

10 (ii) information, previously unknown to EPA, is  
11 received, in whole or in part,

12 and these previously unknown conditions or information together  
13 with other relevant information indicates that the Remedial  
14 Action is not protective of human health or the environment.

15 60. For purposes of Paragraph 58, the information and the  
16 conditions known to EPA shall include only that information and  
17 those conditions known to EPA as of the date ESD-2 was signed,  
18 including the conditions set forth in the ROD, ESD-1, and ESD-2,  
19 and the administrative records supporting the ROD, ESD-1, and  
20 ESD-2. For purposes of Paragraph 59, the information and the  
21 conditions known to EPA shall include only that information and  
22 those conditions known to EPA as of the date of Certification of  
23 Completion of the Remedial Action and set forth in the ROD, ESD-  
24 1, ESD-2, the administrative records supporting the ROD, ESD-1,  
25 and ESD-2, and the post-ROD Amendment administrative record, or  
26 in any information received by EPA pursuant to the requirements  
27 of this Consent Decree prior to Certification of Completion of  
28 the Remedial Action.

1           61.   a.   General Reservations of Rights as to Settling Work  
2                               Defendant

3           The covenants not to sue set forth above do not pertain to  
4 any matters other than those expressly specified in Paragraph  
5 57.a. Plaintiff reserves, and this Consent Decree is without  
6 prejudice to, all rights against Settling Work Defendant with  
7 respect to all other matters including, but not limited to, the  
8 following:

- 9                       (1) claims based on a failure by Settling Work  
10                      Defendant to meet a requirement of this Consent Decree;  
11                      (2) liability arising from the past, present, or future  
12                      disposal, release, or threat of release of Waste  
13                      Materials which occurs or occurred outside of the Site;  
14                      (3) liability of Settling Work Defendant for its future  
15                      disposal of Waste Material at the Site, other than as  
16                      provided in the ROD, ESD-1, ESD-2, or as otherwise  
17                      ordered by EPA;  
18                      (4) criminal liability; and  
19                      (5) liability for violations of federal or state law  
20                      that occur during the performance of the Work or the  
21                      Remedial Action.

22           b.   Reservations concerning Natural Resource Injury

23           Notwithstanding any other provision of this Consent Decree,  
24 the United States, on behalf of its natural resource trustees,  
25 reserves all rights against Settling Work Defendant with respect  
26 to liability for Natural Resource Damages, based on (1)  
27 conditions with respect to the Site, unknown to the United States  
28 at the date of lodging of this Consent Decree, that result in  
releases of hazardous substances that contribute to injury to,

1 destruction of, or loss of Natural Resources, or (2) information  
2 received after the date of lodging of this Consent Decree that  
3 indicates that there is injury to, destruction of, or loss of  
4 Natural Resources of a type that was unknown, or of a magnitude  
5 greater than was known, to the United States at the date of  
6 lodging of this Consent Decree.

7       62. Work Takeover. In the event EPA determines that  
8 Settling Work Defendant has ceased implementation of any portion  
9 of the Work, is seriously or repeatedly deficient or late in its  
10 performance of the Work, or is implementing the Work in a manner  
11 that may cause an endangerment to human health or the  
12 environment, EPA may assume the performance of all or any  
13 portions of the Work as EPA determines necessary. Settling Work  
14 Defendant may invoke the procedures set forth in Section XVI  
15 (Dispute Resolution), Paragraph 44 (record review), to dispute  
16 EPA's determination that takeover of the Work is warranted under  
17 this Paragraph. Settling Work Defendant shall pay all costs  
18 incurred by the United States in performing the Work pursuant to  
19 this Paragraph.

20       63. Notwithstanding any other provision of this Consent  
21 Decree, the United States retains all authority and reserve all  
22 rights to take any and all response actions authorized by law.

23               XIX. COVENANTS BY SETTLING WORK DEFENDANT

24       64. Covenant Not to Sue. Subject to the reservations in  
25 Paragraph 65, Settling Work Defendant hereby covenants not to sue  
26 and agree not to assert any claims or causes of action against  
27 the United States with respect to the Site including, but not  
28 limited to:

1           a.    any direct or indirect claim for reimbursement  
2 from the Hazardous Substance Superfund (established pursuant to  
3 the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA  
4 Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§  
5 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of  
6 law, except as such claims are permitted by Section XIII (Claims  
7 Against the Fund), Paragraphs 31 to 34 above;

8           b.    any claims against the United States under CERCLA  
9 Sections 107 or 113, 42 U.S.C. §§ 9607, 9613, related to the  
10 Site; or

11           c.    any claims arising out of response activities at  
12 the Site, including claims based on EPA's and the State's  
13 selection of response actions, oversight of response activities  
14 and approval of plans for such activities.

15       65. The Settling Work Defendant reserves, and this Consent  
16 Decree is without prejudice to, claims against the United States,  
17 subject to the provisions of Chapter 171 of Title 28 of the  
18 United States Code, for money damages for injury or loss of  
19 property or personal injury or death caused by the negligent or  
20 wrongful act or omission of any employee of the United States  
21 while acting within the scope of his office or employment under  
22 circumstances where the United States, if a private person, would  
23 be liable to the claimant in accordance with the law of the place  
24 where the act or omission occurred. However, any such claim  
25 shall not include a claim for any damages caused, in whole or in  
26 part, by the act or omission of any person, including any  
27 contractor, who is not a federal employee as that term is defined  
28 in 28 U.S.C. § 2671, nor shall any such claim include a claim

1 based on EPA's selection of response actions, or the oversight or  
2 approval of the Settling Work Defendant's plans or activities.  
3 The foregoing applies only to claims that are brought pursuant to  
4 any statute other than CERCLA and for which the waiver of  
5 sovereign immunity is found in a statute other than CERCLA.

6 66. Except as provided in Section XIII (Claims Against the  
7 Fund), Paragraphs 31 to 34 above, nothing in this Consent Decree  
8 shall be deemed to constitute pre-authorization of a claim within  
9 the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40  
10 C.F.R. § 300.700(d).

11 67. Settling Work Defendant agrees to waive all claims or  
12 causes of action that it may have for all matters relating to the  
13 Site, including for contribution, against any Settling Defendant  
14 under CD-1, with regard to the costs incurred in implementing the  
15 additional response actions required by the ROD, ESD-1, or ESD-2,  
16 except for any failure by any other Settling Defendant to meet  
17 one of its obligations under CD-1.

18 XX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

19 68. Nothing in this Consent Decree shall be construed to  
20 create any rights in, or grant any cause of action to, any person  
21 not a Party to this Consent Decree. The preceding sentence shall  
22 not be construed to waive or nullify any rights that any person  
23 not a signatory to this Consent Decree may have under applicable  
24 law. Each of the Parties expressly reserves any and all rights  
25 (including, but not limited to, any right to contribution),  
26 defenses, claims, demands, and causes of action that each Party  
27 may have with respect to any matter, transaction, or occurrence  
28 relating in any way to the Site against any person not a Party

1 hereto.

2         69. The Parties agree, and by entering this Consent Decree  
3 this Court finds, that the Settling Work Defendant is entitled,  
4 as of the effective date of this Consent Decree, to protection  
5 from contribution actions or claims as provided by CERCLA Section  
6 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this  
7 Consent Decree. The "matters addressed" in this Consent Decree  
8 are all response actions taken or to be taken and all response  
9 costs incurred or to be incurred by the United States or any  
10 other person with respect to the response actions required by  
11 this Consent Decree, CD-1, and ESD-2. The "matters addressed" in  
12 this Consent Decree shall not include those response costs or  
13 response action as to which the Plaintiff has reserved its rights  
14 under this Consent Decree (except for claims for failure to  
15 comply with this Consent Decree), in the event that the Plaintiff  
16 asserts rights against the Settling Work Defendant coming within  
17 the scope of such reservations.

18         70. The Settling Work Defendant agrees that it cannot bring  
19 an action for contribution against any non-settling party unless  
20 the EPA has declined to bring an action against that party.  
21 Settling Work Defendant shall notify the United States of its  
22 desire to bring such an action in writing and allow the United  
23 States 60 days to file an action first. Only if the United  
24 States declines to bring an action may Settling Work Defendant  
25 bring an action.

26         71. The Settling Work Defendant also agrees that, with  
27 respect to any suit or claim for contribution brought against it  
28 for matters related to this Consent Decree, it will notify in

1 writing the United States within 10 days of service of the  
2 Complaint on it. In addition, Settling Work Defendant shall  
3 notify the United States within 10 days of service or receipt of  
4 any Motion for Summary Judgment and within 10 days of receipt of  
5 any order from a court setting a case for trial.

6 72. In any subsequent administrative or judicial proceeding  
7 initiated by the United States for injunctive relief, or other  
8 appropriate relief relating to the Site, or Natural Resource  
9 Damages, Settling Work Defendant shall not assert, and may not  
10 maintain, any defense or claim based upon the principles of  
11 waiver, res judicata, collateral estoppel, issue preclusion,  
12 claim-splitting, or other defenses based upon any contention that  
13 the claims raised by the United States in the subsequent  
14 proceeding were or should have been brought in the instant case;  
15 provided, however, that nothing in this Paragraph affects the  
16 enforceability of the covenants not to sue set forth in  
17 Section XVIII (Covenants by the United States).

18 XXI. ACCESS TO INFORMATION

19 73. Settling Work Defendant shall provide to EPA, upon  
20 request, copies of all documents and information within its  
21 possession or control or that of its contractors or agents  
22 relating to activities at the Site or to the implementation of  
23 this Consent Decree including, but not limited to, manifests,  
24 trucking logs, receipts, reports, correspondence, or other  
25 documents or information related to the Work. Settling Work  
26 Defendant shall also make available to EPA, for purposes of  
27 investigation, information gathering, or testimony, their  
28 employees, agents, or representatives with knowledge of relevant



1 facts concerning the performance of the Work.

2       74. a. Settling Work Defendant may assert business  
3 confidentiality claims covering part or all of the documents or  
4 information submitted to Plaintiff under this Consent Decree to  
5 the extent permitted by and in accordance with Section 104(e)(7)  
6 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).  
7 Documents or information determined to be confidential by EPA  
8 will be afforded the protection specified in 40 C.F.R. Part 2,  
9 Subpart B. If no claim of confidentiality accompanies documents  
10 or information when they are submitted to EPA, or if EPA has  
11 notified Settling Work Defendant that the documents or  
12 information are not confidential under the standards of  
13 Section 104(e)(7) of CERCLA, the public may be given access to  
14 such documents or information without further notice to Settling  
15 Work Defendant.

16       b. Settling Work Defendant may assert that certain  
17 documents, records and other information are privileged under the  
18 attorney-client privilege or any other privilege recognized by  
19 federal law. If the Settling Work Defendant asserts such a  
20 privilege in lieu of providing documents, it shall provide the  
21 Plaintiff with the following: (1) the title of the document,  
22 record, or information; (2) the date of the document, record, or  
23 information; (3) the name and title of the author of the  
24 document, record, or information; (4) the name and title of each  
25 addressee and recipient; (5) a description of the contents of the  
26 document, record, or information; and (6) the privilege asserted  
27 by Settling Work Defendant. However, no documents, reports or  
28 other information created or generated pursuant to the

1 requirements of this Consent Decree shall be withheld on the  
2 grounds that it is privileged.

3 75. No claim of confidentiality shall be made with respect  
4 to any data including, but not limited to, all sampling,  
5 analytical, monitoring, hydrogeologic, scientific, chemical, or  
6 engineering data, or any other documents or information  
7 evidencing conditions at or around the Site.

8 XXII. RETENTION OF RECORDS

9 76. a. Until 10 years after Settling Work Defendant  
10 receives EPA's notification pursuant to Paragraph 28 of Section  
11 XI (Certification of Completion), the Settling Work Defendant  
12 shall preserve and retain all records and documents now in its  
13 possession or control or that come into its possession or control  
14 that relate in any manner to the performance of the Work or  
15 liability of any person for response actions conducted and to be  
16 conducted at the Site, regardless of any document retention  
17 policy to the contrary. Until 10 years after Settling Work  
18 Defendant receives EPA's notification pursuant to Paragraph 28 of  
19 Section XI (Certification of Completion), Settling Work Defendant  
20 shall also instruct its contractors and agents to preserve all  
21 documents, records, and information of whatever kind, nature or  
22 description relating to the performance of the Work.

23 77. At the conclusion of this document retention period,  
24 Settling Work Defendant shall notify the United States at least  
25 90 days prior to the destruction of any such records or documents  
26 and, upon request by the United States, Settling Work Defendant  
27 shall deliver any such records or documents to EPA. The Settling  
28 Work Defendant may assert that certain documents, records and

1 other information are privileged under the attorney-client  
2 privilege or any other privilege recognized by federal law. If  
3 the Settling Defendant asserts such a privilege, it shall  
4 provide Plaintiff with the following: (1) the title of the  
5 document, record, or information; (2) the date of the document,  
6 record, or information; (3) the name and title of the author of  
7 the document, record, or information; (4) the name and title of  
8 each addressee and recipient; (5) a description of the subject of  
9 the document, record, or information; and (6) the privilege  
10 asserted by the Settling Work Defendant. However, no documents,  
11 reports or other information created or generated pursuant to the  
12 requirements of the Consent Decree shall be withheld on the  
13 grounds that it is privileged.

14 78. The Settling Work Defendant hereby certifies that, to  
15 the best of its knowledge and belief, after thorough inquiry, it  
16 has not altered, mutilated, discarded, destroyed or otherwise  
17 disposed of any records, documents or other information relating  
18 to its potential liability regarding the Site since notification  
19 of potential liability by the United States or the filing of suit  
20 against it regarding the Site and that it has fully complied with  
21 any and all EPA requests for information pursuant to Section  
22 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and  
23 Section 3007 of RCRA, 42 U.S.C. § 6927.

24 XXIII. NOTICES AND SUBMISSIONS

25 79. Whenever, under the terms of this Consent Decree,  
26 written notice is required to be given or a report or other  
27 document is required to be sent by one Party to another, it shall  
28 be directed to the individual(s) at the addresses specified

1 below, unless those individuals or their successors give notice  
2 of a change to the other Party in writing. All notices and  
3 submissions shall be considered effective upon receipt, unless  
4 otherwise provided in this Consent Decree.

5 As to the United States:

6 Chief, Environmental Enforcement Section  
7 Environment and Natural Resources Division  
8 U.S. Department of Justice  
9 P.O. Box 7611  
10 Ben Franklin Station  
11 Washington, D.C. 20044-7611  
12 Re: DOJ # 90-11-2-355

13 David B. Glazer, Esq.  
14 U.S. Department of Justice  
15 301 Howard Street, Suite 870  
16 San Francisco, California 94105

17 Rose Marie Caraway  
18 EPA Project Coordinator  
19 United States Environmental Protection  
20 Agency - Region 9  
21 75 Hawthorne Street  
22 San Francisco, California 94105

23 and

24 Keith Takata  
25 Director, Superfund Division  
26 United States Environmental Protection  
27 Agency - Region 9  
28 75 Hawthorne Street  
San Francisco, California 94105

29 As to the Settling Work Defendant:

30 Chevron USA Inc.  
31 c/o Chevron Environmental Management Company  
32 6001 Bollinger Canyon Road  
33 Building K  
34 San Ramon, CA 94583-2324  
35 Attention: President, CEMC

36 XXIV. EFFECTIVE DATE

37 80. The effective date of this Consent Decree shall be the  
38 Date of Entry of this Consent Decree.

1 XXV. RETENTION OF JURISDICTION

2 81. This Court retains jurisdiction over both the subject  
3 matter of this Consent Decree and the Parties for the duration of  
4 the performance of the terms and provisions of this Consent  
5 Decree for the purpose of enabling any of the Parties to  
6 apply to the Court at any time for such further order, direction,  
7 and relief as may be necessary or appropriate for the  
8 construction or modification of this Consent Decree, or to  
9 effectuate or enforce compliance with its terms, or to resolve  
10 disputes in accordance with Section XIX (Dispute Resolution).

11 XXVI. APPENDICES

12 82. The following appendices are attached to and  
13 incorporated into this Consent Decree:

14 "Appendix A" is the ESD-2.

15 "Appendix B" is the Preauthorization Decision Document.

16 "Appendix C" is a description and map of the Site.

17 "Appendix D" is the audit procedures.

18 XXVII. COMMUNITY RELATIONS

19 83. To the extent an additional community relations plan is  
20 needed for the implementation of ESD-2, Settling Work Defendant  
21 shall propose to EPA its participation in the community relations  
22 plan to be developed by EPA. EPA will determine the appropriate  
23 role for the Settling Work Defendant under the Plan. Settling  
24 Work Defendant shall also cooperate with EPA in providing  
25 information regarding the Work to the public. As requested by  
26 EPA, Settling Work Defendant shall participate in the preparation  
27 of such information for dissemination to the public and in public  
28 meetings that may be held or sponsored by EPA to explain the

1 additional response activities at or relating to the Site  
2 required by ESD-2.

3 XXVIII. MODIFICATION

4 84. Schedules specified in this Consent Decree for  
5 completion of the Work may be modified by agreement of EPA and  
6 the Settling Work Defendant. All such modifications shall be  
7 made in writing.

8 85. No material modifications shall be made to the  
9 Relocation Plan without written notification to and written  
10 approval of the United States and the Settling Work Defendant.  
11 Modifications to the Relocation Plan that do not materially alter  
12 that document may be made by written agreement between EPA and  
13 Settling Work Defendant.

14 86. Nothing in this Decree shall be deemed to alter the  
15 Court's power to enforce, supervise or approve modifications to  
16 this Consent Decree.

17 XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

18 87. This Consent Decree shall be lodged with the Court for  
19 a period of not less than 30 days for public notice and comment  
20 in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.  
21 § 9622(d)(2), 28 C.F.R. § 50.7, and Section 7003 of RCRA, 42  
22 U.S.C. § 6973. Commenters may request an opportunity for a  
23 public hearing in the affected area, in accordance with Section  
24 7003(d) of RCRA, 42 U.S.C. § 6973(d). The United States  
25 reserves the right to withdraw or withhold its consent if the  
26 comments regarding this Consent Decree disclose facts or  
27 considerations that indicate that the Consent Decree is  
28 inappropriate, improper, or inadequate. Settling Work Defendant

1 consents to the entry of this Consent Decree without further  
2 notice.

3 88. If for any reason the Court should decline to approve  
4 this Consent Decree in the form presented, this agreement is  
5 voidable at the sole discretion of any Party, and the terms of  
6 the agreement may not be used as evidence in any litigation  
7 between the Parties.

8 XXX. SIGNATORIES/SERVICE

9 89. Each undersigned representative of a Party to this  
10 Consent Decree certifies that he or she is fully authorized to  
11 enter into the terms and conditions of this Consent Decree and to  
12 execute and legally bind such Party to this document.

13 90. Settling Work Defendant hereby agrees not to oppose  
14 entry of this Consent Decree by this Court or to challenge any  
15 provision of this Consent Decree unless the United States has  
16 notified the Settling Work Defendant in writing that it no longer  
17 supports entry of the Consent Decree.

18 91. Settling Work Defendant shall identify, on the attached  
19 signature page, the name, address and telephone number of an  
20 agent who is authorized to accept service of process by mail on  
21 behalf of that Party with respect to all matters arising under or  
22 relating to this Consent Decree. Settling Work Defendant hereby  
23 agrees to accept service in that manner and to waive any  
24 applicable service requirements set forth in the Federal Rules of  
25 Civil Procedure and any applicable local rules of this Court.  
26 Settling Work Defendant also agrees to effect service, upon all  
27 other parties to the above-captioned action, of any pleadings  
28 with respect to any matters arising under or relating to this

1 Consent Decree.

2 92. The section titles and captions contained in this  
3 Consent Decree are inserted only as a matter of convenience and  
4 for reference, and shall in no way be construed to define, limit,  
5 or extend the scope of this Consent Decree or the intent of any  
6 of its provisions.

7 93. This Consent Decree may be signed in counterpart  
8 originals, all of which when taken together shall constitute an  
9 integrated agreement.

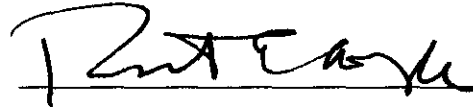
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SO ORDERED THIS 30<sup>th</sup> DAY OF July, 2001.

12

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14

United States District Judge

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18

THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
matter of United States v. Chevron USA Inc. et al., relating to  
the Purity Oil Superfund Site.

19

FOR THE UNITED STATES OF AMERICA

20

21

Date:

7.20.01

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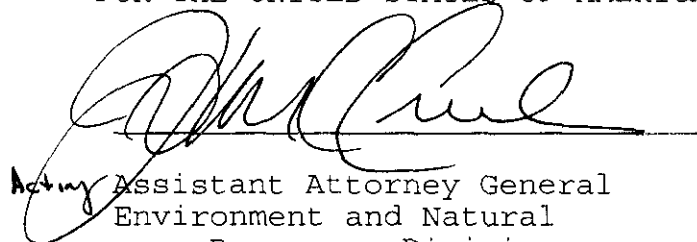
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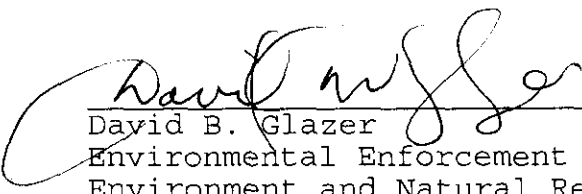
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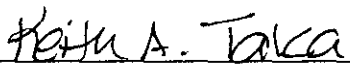
Acting Assistant Attorney General  
Environment and Natural  
Resources Division  
U.S. Department of Justice 950  
Pennsylvania Ave., N.W., #2143  
Washington, D.C. 20530  
(202) 514 2701



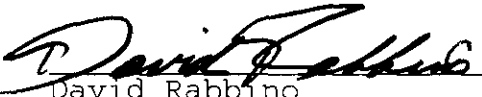
1  
2 Date: 7-26-01

  
David B. Glazer  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
301 Howard Street, Suite 870  
San Francisco, California 94105  
(415) 744-6491

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11 Date: 6-4-01

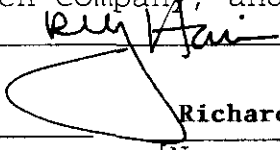
  
Keith A. Takata  
Director, Superfund Division  
U.S. Environmental Protection  
Agency - Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 744-2356

12  
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14  
15  
16  
17 Date: 5/31/01

  
David Rabbino  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency - Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 744-1336

1 United States v. Chevron USA, Inc. et al.  
2 Consent Decree Signature Page

3  
4 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
5 matter of United States v. Chevron USA Inc. et al., relating to  
6 the Purity Oil Superfund Site.

7 Chevron Environmental Management Company, for and on behalf of  
8 Chevron U.S.A. Inc., Chevron Corporation, Chevron Capital U.S.A.  
9 Inc., Chevron Chemical Company, Chevron Oil Finance Company,  
Chevron Pipe Line Company, Chevron Environmental Management  
Company, Huntington Beach Company, and the Pittsburgh & Midway  
Coal Mining Company 

10 Date: 5-23-01

Richard J. Harris

11 [Name -- Please Type]  
Assistant Secretary

12 [Title -- Please Type]

2613 Camino Ramon, San Ramon, CA 94583

13 [Address -- Please Type]

14 Agent Authorized to Accept Service on Behalf of Above-  
15 signed Party:

16 Name: Allan Vance

17 Title: President, CEMC

18 Address: 6001 Bollinger Canyon Road  
19 Building K  
20 San Ramon, CA 94583-2324

21 Tel. Number: (925) 842-5200  
22  
23  
24  
25  
26  
27  
28

pk

United States District Court  
for the  
Eastern District of California  
July 31, 2001

\* \* CERTIFICATE OF SERVICE \* \*

1:98-cv-05412

USA

v.

Chevron USA Inc

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on July 31, 2001, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Richard J Cutler  
U S Attorneys office  
1130 O Street  
Room 3654  
Fresno, CA 93721

REC

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Sacramento, CA 94244-2550

Derek Edward Van Hoorn  
6339 Culpepper Pl.  
Stockton, CA 95207

Jack L. Wagner, Clerk

BY: P. Kelly  
Deputy Clerk